

Minutes of the Initial Organizing Meeting of the UTAH MINE SAFETY COMMISSION

The Initial Organizing Meeting of the Utah Mine Safety Commission was held at the Western Energy Training Center, 847 North HWY 191, Price, Utah September 10, 2007 at 10:00 a.m.

The following Commission Members were in attendance: Scott M. Matheson, Jr., Former Senator Jake Garn, Senator Mike Dmitrich, David Litvin, Mayor Hillary Gordon, Representative Kay McIff, Dennis O'Dell, Mayor Joe Piccolo, and John R. Baza, Executive Secretary to the Commission.

Also attending were: Val Payne and Mike Mower, Representatives of the Governor's Office, Jim Springer, Public Relations Officer for the Department of Natural Resources, and Julie Carter, Secretary to the Commission and Executive Director; and Steve Alder, Attorney for the Commission and Executive Director.

1. Greeting and Introductions.

Scott Matheson, Jr., Chairman, welcomed everyone to the meeting and thanked the Western Energy Training Center for its hospitality. Chairman Matheson in his welcoming remarks stated that the Commission's job is to study the role of the State of Utah in mine safety, accident prevention, and accident response. He said that the Commission wants to understand what the State's role and responsibilities have been in the past, what it currently does, and to suggest what the State of Utah can do to improve in the future. The Chairman emphasized that the Commission has not been asked to investigate the specific causes of the Crandall Canyon Mine disaster or to find fault, since the MSHA investigation, Congressional investigation, and other reviews will focus on those questions. The Commission will need to know information about the Crandall Canyon Mine disaster as part of its work. The Chairman stressed that the Commission's mission is to recommend measures that the State should take in accident prevention and accident response.

The Chairman invited Commission members to introduce themselves, and the members of the Commission made introductions with brief statements regarding their background and expectations for the Commission's work.

2. Introduction of the Public Comment Process.

The Chairman stated that the purpose of this meeting is to hear from various public officials concerning the background of mine safety regulation in Utah, the role of State and local government in emergency response, and information about the MSHA investigation of the Crandall Canyon Mine disaster. This meeting will also serve as an organizational meeting. He stated that today's meeting will not be a hearing.

Chairman Matheson said that the Governor asked that public hearings be held in Huntington, Utah and in Price, Utah to allow all interested persons to present their comments and suggestions to this Commission. The Chairman emphasized that it is important for the Commission to receive public comment from anyone and everyone who has information that could assist in the work of this Commission. The Chairman said a website will be established to encourage public comment in both written and email form.

The Chairman announced that the Commission will organize a technical advisory group to assist in the work. The technical advisory group will represent a wide range of expertise and experience, from mining engineers, to people who have had experience in inspection and training, to people who have worked for years in the mines. The Chairman encouraged nominations, self-nominations, and any suggestions that the Commissioners or anyone else may have that might benefit the work of the Commission. The Chairman asked that recommendations be made soon.

3. Background and History of Mine Safety Regulation in the State of Utah.

Mr. Alan Hennebold, Deputy Commissioner & General Counsel, Labor Commission, presented the Commission with a brief overview of the history of mine safety regulation in Utah and a summary of the mine safety programs for the coal producing states. Mr. Hennebold noted that the Labor Commission understands this is a forward looking Commission trying to determine what will best protect the safety of miners in Utah and he is very happy to be a part of that effort. He reported that members of the Labor Commission have friends, family, and relatives that work in the mines so this is important on a personal level, and that he also understand the vast significance on the public policy level of the work that the Commission is doing. He stated that it was his purpose is to provide a historical perspective, kind of the back-story that can inform the Commission as it moves forward. The substance of Mr. Hennebold's presentation is summarized in the handout, "Overview: Regulation of Coal Mine Safety in Utah," by Sherrie Hayashi, Commissioner, Utah Labor Commission.

In his oral remarks Mr. Hennebold covered the history of Utah coal mining, the history of the Utah State regulation of coal mining safety, the advent of federal regulation, and the effect of the federal Mine Health and Safety Act on Utah's mine safety laws, and the eventual withdrawal of the State from the regulation of mine safety. Mr. Hennebold also presented a summary of current mine safety programs in other states. Chairman Matheson asked about the coal miner certification program and relationship between the Labor Commission and MSHA. Mr. Hennebold introduced Mr. Pete Hackford to answer the question.

Mr. Hackford reported as follows: Last year the State administered 371 miner certification exams. These exams consist of five tests: 1) fireboss, 2) underground foreman, 3) surface foreman, 4) underground electrician, 5) and surface electrician. These are mandated occupations that need to be tested for through MSHA CFR 30. The CFR allows the states to go in and do these examinations and they will acknowledge them, so MSHA does not administer these tests themselves. The State of Utah Title 40, chapter 2 of the statute allows us to have a minimum of eight panel members from a various occupations throughout the coal mining industry and we rely on them heavily. We give this exam quarterly. We give the exams the first part of quarter and then we allow a 1st retest and 2nd retest. The law requires that before a miner goes underground that they go through a training course of 40 hours. The Labor Commission does not administer this training. After the training is completed miners can go underground, and this is where the State's examination comes in. Once the miner has passed successfully the miner is give certification and in turn the certification is transferred to MSHA and the mines.

Mr. Hackford further reported that there has been a large increase in testing over the last year. The exam on Friday at CEU tested 40 people, but at the testing session before that 140 people were tested. Younger miners are coming in, and they really need this training. CEU gets grant money from MSHA to administer the test. The State deals directly with MSHA and sends its exams to Denver for review. The tests are put together by the Labor Commission panel and MSHA reviews the tests and makes recommendations. Mr. Hackford stated that his staff had put a lot of resources and time into

building up this program. They feel you can have the safest mine in the world but if the miners are not educated and trained you don't have a safe mine.

Mr. Dennis O'Dell asked if the Utah Mine Safety Commission could be provided with data on what other states are spending for inspection programs. Mr. Hennebold said he will get the information.

Mr. O'Dell asked if state inspection programs inspect for safety or training? The Labor Commission has not qualitatively compiled that information. He also asked for a common measure of safety between states with inspection programs and states without inspection programs. Mr. O'Dell said a comparison of the accident rates may do, but that they should exercise caution when comparing accident information, since some of that information is missing. He said that in larger operations you'll see higher accident and injury reporting, but for small mines safety reports tend to be lax.

A discussion followed about whether or not the certification tests were specific to conditions found only in Utah. The tests are not specific to Utah and this may be an area the Commission should look at. One thing unique to Utah is the amount of gases found in the mines. Miners certified in other states still have to take Utah certification tests, notably the tests for fire boss and mine foreman to ensure that they know all of the gases that could be encountered in the mine. Even though our laws are not different – all of our laws are federal laws – some of our tests are different because of the gases.

4. The Role and Responsibilities of MSHA in the State of Utah

Mr. Bill Denning, MSHA, reported to the Commission on the role and responsibilities of the federal Mine Safety and Health Administration. See handout, "The Role & Responsibility of MSHA in the State of Utah." Mr. Denning, reported as follows:

There are 13 underground mines in Utah that produced 26 million tons of coal last year, using 2,058 employees. The 26 million tons is about 2.5 % of the nation's coal. There are two surface mines in Utah, and seven surface facilities. Surface facilities are usually loadout facilities. All the coal mining comes from three different counties, Carbon, Emery, and Sevier Counties. MSHA has a field office in Price, Utah, with nine inspectors. It has four specialist positions; a diesel equipment specialist; a health specialist; a roof control specialist; and an electrical specialist. The office has five inspectors and specialist trainees who are going through training now. It will be a year before they become authorized representatives and are able to conduct inspections. In addition, the office has two educational and training specialists, one in Price and one in Salt Lake City. There are also metal/non metal inspectors based out of Salt Lake City.

MSHA has a triangular type role and responsibility. There is the enforcement part of the triangle, engineering, and then the education and training parts of the triangle. These are the three main functions of MSHA. For enforcement, there are two main divisions: the coal mine safety and health division, and the metal/non metal division. Metal/ non-metal inspects all of the mines besides coal. In coal mine safety and health there are eleven districts throughout the country. District nine covers states west of the Mississippi, 16 states in all that produce coal. Utah is in the Rocky Mountain District headquartered in Denver, Colorado. One half of the nation's coal comes from district nine.

The engineering group is called the technical support division. They provide scientific and engineering solutions to mitigate hazards in the mine. Technical support is broken down into two main groups, an engineering group in Pittsburgh, PA, and the approval and certification group in Philadelphia,

WV. The approval and certification group approves the use of permissible equipment in underground mines.

The third main group is the educational policy and development division. That group has two main divisions; education field service specialists; and the mine safety and health academy in Beckley, WV. That academy trains inspectors and the mining industry.

MSHA enforces and administers the Federal Mine Safety and Health Act of 1977. This act has a major amendment last year by the Miner Act passed last year by Congress. All of our roles and responsibilities are contained in this Act. We also enforce the safety and health regulations in title 30 Code of Federal Regulations.

Mine Act requires MSHA to conduct four complete inspections per year at each underground mine and two complete inspections at each surface mine. MSHA is also required to investigate complaints by miners. Spot inspections must be conducted at mines that have a large amount of methane on a five, ten, and fifteen-day interval. There are various other spot and special type inspections.

MSHA also conducts investigations. It investigates accidents; petitions for modification of a safety standard; for willful violations; and for discrimination against a minor who made a complaint. The Mine Act is very specific about enforcement actions that are permitted. There are a number of citations and orders that can be taken, such as a 104a citation, which is an S&S violation (significant and substantial hazard). If an operator fails to abate a 104a citation we can issue a 104b order. A 104d citation when an operator fails to comply with a standard. 107a is an imminent danger order. There's a 104e notice for a finding of a pattern of violation – it hasn't been used very often but we are taking a closer look at patterns of violation now. The 104g Order is issued to remove miners not adequately trained from the mine. All these citations and orders are assessed civil penalties. The maximum penalty is \$220,000 for flagrant violations.

One other aspect of the Mine Act is a provision that provides funds to the states, called the state grants program. The funds are provided to the states to conduct safety and health programs in coal and metal/non metal mines. In Utah the program is under the direction of Governor Huntsman and is administered by the Utah College of Applied Technology. MSHA can defer inspections to states. In states with inspection programs there is joint coordination with MSHA. Most states use the grants to fund safety and training programs. The money could be used for inspections. If the state wanted to inspect they would have to appropriate more money.

Mr. Miles Nelson reported that the College of Eastern Utah receives \$165,000 plus \$25,000 for the Labor Commission that is used mainly for training. The money from MSHA is limited to education and training.

Discussion of MSHA oversight and review of the mine rescue systems. It would help to keep an inventory of what the community has and what it can do regarding training exercises and duties and responsibilities in the case of an accident. Presently MSHA regulations require that each mine have two mine rescue teams either on the property, or make arrangements with another mine that has two mine rescue teams within two hours distance. Proposed regulations will change that to a one hour distance. The teams are required to be ready to assist to go underground when there is an emergency. They are required to be trained and meet certain physical standards. There are regulations that set standards for what the mine rescue station has to have. One change in the new regulations is to require mine rescue

teams to compete in two contests per year, and they must be familiar with the mines they provide mine rescue capability to, and they must train at those mines. In addition local planning teams should have continued interaction with MSHA for periodic training. Local law enforcement, department heads and elected officials should be trained and should visit the mine sites to familiarize themselves with the location.

Chairman Matheson stated that the mission of the Commission is to examine the State's role in mine safety and accident prevention and emergency response. Part of that will be to make sure the local officials on the ground have a solid understanding of what their expected roles are. The Chairman asked what MSHA's understanding of those points of contact that MSHA has with state officials and local officials that the Commission should know about that would be helpful in gaining a better understanding of how the whole system is supposed to work?

Mr. Bill Taylor responded to the Chairman's question as follows: There isn't a whole lot of contact with state and local officials until an emergency arises. He stated that on an annual basis MSHA interacts with the State in planning mine rescue contests. Each mine has an emergency response contact plan. Each mine plan is developed specifically for the mine location. They have agreements with municipalities and city and county governments based on the location they are in. When we look at working with local agencies we occasionally have complaints that come in from the mines, and we have worked with local and city and county governments regarding specific obligations that miners have.

Mr. Taylor further stated that the Commission has a unique opportunity to do some things the federal government cannot do. The Willowcreek mine discovered hydrocarbons that were not addressed by federal law. MSHA only regulates methane gas. But the nature of the properties of the hydrocarbons discovered at Willowcreek mine were different from methane and much more explosive. When we look at the federal agency that provides coal mine safety for our miners nationwide, congress usually will develop regulations that cover a broad spectrum. When we look at self contained self rescuers, when we look at breathable air, those are things that every mine needs to have nationwide, but when we addressed this issue regarding hydrocarbons it was the only issue that we couldn't take upon us because it's not something that is experienced in other mines in the United States. Although the disaster at Crandall Canyon Mine was a terribly tragic incident, any of the miners in this room will tell you they have experienced bounces and outbursts. We currently have a need to assist us in Utah mines to develop policy to protect the health and safety of miners. There are great things that this Commission could do to help protect the health and safety of coal miners in Utah. When we look at hydrocarbons we are not simply looking at a gas that is explosive, we are looking at an unknown entity that we do not know how it will affect the health and safety of miners when combined with coal dust and diesel emissions.

Current federal regulation requires that gases cannot exceed 2% methane. Other hydrocarbons could register on the indicator at 2.5%, but when the gas samples are sent in for testing methane is at acceptable levels. There are no laws to address other gases even if they are at a much more dangerous level. Congress will most likely not regulate this because these hydrocarbons are unique to Utah. The only protection the miners are going to have will come from this Commission.

Under the mine act there are provisions for ventilation plans that can be approved by the district manager. But it is virtually impossible for Congress or MSHA to pass law for specific areas – laws are general in nature.

5. Briefing on the MSHA Investigation into the Crandall Canyon Mine Incident